

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TRACY AYNES,

Plaintiff,

v.

KELLOGG SALES COMPANY,

Defendants.

Case No. C07-05623 RBL

**STIPULATION AND PROTECTIVE
ORDER**

Plaintiff, Tracy Aynes, through her counsel of record, Anne-Marie E. Sargent and Stephen P. Connor of Connor & Sargent; PLLC and Defendant Kellogg Sales Company, through its counsel of record, Leigh Ann Collings Tift, hereby stipulate as follows:

1. Confidential Information

“Confidential Information” as used herein shall mean any information disclosed in this proceeding, whether disclosed in an interrogatory answer, during a deposition, by way of a written statement in a document, or otherwise, that a party designates as “confidential” irrespective of who produced the information, and that relates to: medical records and medical information; trade secret and proprietary business information as defined in the Uniform Trade Secrets Act, RCW 19.108.010(4), non-public financial data of the Kellogg Sales Company,

STIPULATION AND PROTECTIVE ORDER

CASE NO. C07-53858 RBL

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1 and/or data concerning personnel, pay, tax identification numbers, or employment records of
2 current or former employees of Defendant other than the Plaintiff.

3 A party may designate any document produced in discovery as Confidential Information
4 by stamping the word "CONFIDENTIAL" thereon. Even if not initially stamped
5 "CONFIDENTIAL" prior to production, both parties reserve the right to identify as confidential
6 any documents produced for inspection and selected by the receiving party for copying. Such
7 Confidential Information, marked "CONFIDENTIAL," shall not be utilized or disclosed by the
8 receiving party, its agents or its employees, except in accordance with the terms of this Order.

9 A party may designate portions of deposition transcripts, or transcripts as a whole, to
10 constitute Confidential Information which are then subject to this order. A party may designate
11 those portions of the testimony in the transcript as containing Confidential Information at the
12 time of the deposition or thirty (30) days after receipt of the transcript. The reporter shall
13 promptly conform the original copy by noting on the cover of the deposition transcript that
14 portions of the deposition transcript contain confidential information and by stamping the word
15 "CONFIDENTIAL" on each page, and counsel shall conform their copies of the transcript in
16 accordance with the designation. The portions so designated shall thereafter not be utilized or
17 disclosed by the other party, its agents or its employees, except in accordance with the terms of
18 this Order. However, if portions of the transcript must be filed within 30 days in court, the
19 designating party must move for protection of those portions after filing.

20 Notwithstanding the designation as "CONFIDENTIAL" of any testimony, evidence or
21 other matters as provided above, said documents, testimony, evidence and matters shall not in
22 fact be deemed Confidential Information and shall not be subject to this Order, if the other party
23 sustains the burden of showing that the substance thereof:

24 (i) is, at the time of disclosure by the designating party, public knowledge by publication
252 or otherwise;

6
STIPULATION AND PROTECTIVE ORDER

CASE NO. C07-53858 RBL

Firmwide:85316791.1 047719.1009

1 (ii) becomes at any time, through no act or failure to act on the part of the receiving party
2 and without breach of any obligation of confidence, public knowledge;

3 (iii) is, at the time of disclosure by the designating party, already in the possession of the
4 receiving party and was not acquired directly or indirectly from the designating party, although
5 this provision shall not apply to medical information, or information related to leaves of absence
6 or requests for leave; or

7 (iv) has been made available to the receiving party by a third party who obtained the
8 same by legal means and without any obligation of confidence to the designating party.

9 2. Reasonable Efforts

10 The parties shall use reasonable efforts to designate Confidential Information only as
11 necessary to protect their respective interests. Any information, document, transcript or thing
12 not designated as "CONFIDENTIAL" shall not be covered by this Order, provided, however,
13 that medical records are CONFIDENTIAL regardless of whether they have been marked, and
14 provided further that inadvertent production of any information, document or thing without a
15 designation of "CONFIDENTIAL" shall not in and of itself be deemed a waiver of any party's
16 claim of confidentiality as to such matter, and the party thereafter may designate the same as
17 "CONFIDENTIAL." Further, if any information is initially undesignated and a party later
18 determines that the information is confidential, it shall notify the other parties of the new
19 Confidential Information designation and provide replacement documents with the appropriate
20 CONFIDENTIAL mark. The new designation will be effective upon receipt of such notification
21 and replacement documents, and will be implemented as soon as reasonable by the receiving
22 party. Disclosure by any party of such matter prior to notice by any party of the confidential
23 nature thereof shall not be deemed a violation of this Order.

24 3. Persons Bound By This Order

252 The persons bound by this Order are:

6
STIPULATION AND PROTECTIVE ORDER

CASE NO. C07-53858 RBL

Firmwide:85316791.1 047719.1009

(a) All present parties to this proceeding;

(b) All individual, corporations or other entities who later appear as parties to the proceeding;

(c) The employees, agents, and attorneys of the parties, including counsel of record, experts and consultants; and

(d) All third party respondents to any discovery request by any party.

In the event that additional persons become parties to this litigation, they shall not have access to Confidential Information produced by or obtained from any party until such new party and the existing parties execute a copy of this Stipulation and Protective Order.

4. Obligations of Persons Bound By This Order

No person bound by this Order shall disclose Confidential Information to any other person other than as provided in paragraph 5 below. No person bound by this Order shall use Confidential Information for any purpose other than the prosecution or defense of this proceeding. The attorneys of record for the parties to this proceeding shall make the terms of this Order known to all others persons bound by this Order and, together with their clients, are responsible for compliance with this Order.

5. Person Who May Receive Confidential Information

The only persons to whom confidential Information may be disclosed ("Designated Persons") by either party are:

(a) Parties and attorneys of record for any parties to this proceeding requesting discovery of the Confidential Information, including the paralegal, stenographic, contract and clerical employees associated with the attorneys;

(b) Members of any party's in-house legal staff, including attorneys, paralegals and staff, who are directly involved in this proceeding,

STIPULATION AND PROTECTIVE ORDER

CASE NO. C07-53858 RBL

Firmwide:85316791.1 047719.1009

1 (c) Third party experts, consultants and investigators who are assisting the parties or
2 the attorneys in this proceeding; however, prior to disclosure of any Confidential Information,
3 such third parties shall agree to be bound by this Order;

4 (d) Any person upon the written agreement of the attorneys for the parties, or upon
5 Order of the Court;

6 (e) The Court, judges and Court personnel in pleadings or testimony related to this
7 matter;

8 (f) Actual and potential witnesses to the extent necessary to verify or challenge the
9 information; or

10 (g) Court reporters involved in taking depositions in this case.

11 No Confidential Information may be disclosed, either directly or indirectly, except by
12 prior written approval of the parties or pursuant to an order of this court (where applicable),
13 except to the persons specified above.

14 6. Confidentiality Challenge

15 If any party to the proceeding believes that designated Confidential Information should
16 not be subject to this Order, the party may provide written notification to the other party. The
17 notice shall clearly specify the designated information and the reason(s) for the belief that the
18 designated information is not properly subject to this Order. Either party may bring a motion
19 seeking an order of the court to determine if the designated Confidential Information is properly
20 subject to this Order. If such a motion is brought, the designated Confidential Information shall
21 remain subject to this Order until the court makes its determination. At the time for hearing any
22 such motion, the party seeking to hold the information confidential shall have the burden of
23 going forward with evidence to show that the information designated as confidential should
24 come within the protection of this Order.

252 6
STIPULATION AND PROTECTIVE ORDER

CASE NO. C07-53858 RBL

Firmwide:85316791.1 047719.1009

1 7. Confidential Information at Trial

2 The designation of any information, documents or things as confidential during discovery
3 does not imply agreement nor raise an inference of such a designation or treatment at trial.

4 8. Amendments of Order

5 Any party may move for relief from, or general or particular modification of, the
6 mechanism and need for maintaining confidentiality provided in this Order or the application of
7 this Order. This Order may be amended by the written agreement of counsel for the parties to
8 this agreement and any pertinent third parties in the form of a stipulation.

9 9. Duration of Order

10 This Order is intended to regulate the handling of Confidential Information during the
11 entirety of this proceeding and thereafter, and shall remain in full force and effect until modified,
12 superseded or terminated on the record by agreement of all the parties to this proceeding and any
13 pertinent third parties or by Order of the Court. This Order shall become effective as between
14 the parties when executed, with or without the Court's entry of same.

15 10. Miscellaneous

16 (a) The information protected by this Order is the substance of the Confidential
17 Information, no matter what form the information is in and no matter how the information might
18 be communicated. The parties do not intend to in any way waive and hereby expressly reserve
19 their right to assert and preserve the confidentiality of any information disclosed in this
20 Proceeding that is not designated as Confidential Information pursuant to this Order.

21 (b) Recipients of Confidential Information pursuant to this Order shall exercise
22 reasonable and appropriate care with regard to such Confidential Information to ensure that the
23 confidential nature of the same is maintained.

24 (c) In the event any person in receipt of Confidential Information shall receive a
252 written oral request, subpoena, or court order seeking disclosure of another party's Confidential

6 **STIPULATION AND PROTECTIVE ORDER**

CASE NO. C07-53858 RBL

Firmwide:85316791.1 047719.1009

1 Information, such person shall immediately, upon receipt of such request, subpoena, or court
2 order notify counsel for the party that produced the Confidential Information of the request,
3 subpoena, or court order and shall provide a copy of the same. Except in the case of an order
4 requiring immediate production of the requested information, neither party shall disclose the
5 other party's Confidential Information without giving the other party an opportunity to seek from
6 this court an order governing disclosure of the requested information.

7 (d) If Confidential Information is disclosed to any person other than in the manner
8 authorized by this Order, the person responsible for the disclosure shall immediately bring all the
9 pertinent facts relating to such disclosure to the attention of counsel for all parties without
10 prejudice to the right's and remedies of any party, and shall make every effort to prevent further
11 disclosure by it or by the person who was the recipient of such information.

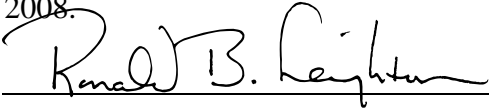
12 (e) This Order is made to facilitate discovery and the production of discoverable
13 evidence in this action. Neither the execution of this Stipulated Order by the parties, the
14 designation of any information as Confidential Information under the Order, the failure to make
15 such designation, or the failure to object to such designation by either party shall constitute
16 evidence with respect to any issue in this litigation. This Order shall not abrogate or diminish
17 any contractual, statutory other legal right or obligation any party may have with respect to
18 information disclosed in this matter.

19 (f) Nothing herein shall prevent a Designating Party from using or disclosing its own
20 Confidential Information.
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ORDER

IT IS SO ORDERED.

DATED this 11th day of June, 2008.

A handwritten signature in black ink, appearing to read "Ronald B. Leighton", written over a horizontal line.

RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

1 Presented By

2 /s/

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13 Attorney for Defendant

14 KELLOGG SALES COMPANY

15 Copy Received; Approved as to Form;

16 Notice of Presentation Waived:

17 /s/

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28 TRACY AYNES

252 **STIPULATION AND PROTECTIVE ORDER**

CASE NO. C07-53858 RBL

Firmwide:85316791.1 047719.1009